

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ESTATE OF EMERICK ALAN COLEMAN,
BY CAROL CLEVELAND, ADMINISTRATRIX
AND MOTHER AND GUARDIAN OF KHALIL
NICHOLAS COLEMAN-CLEVELAND,

Plaintiff,

v.

ORDER
05-CV-441A

CON VEY/KEYSTONE, INC., et al.,

Defendant.

The above-referenced case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(B). On September 18, 2006, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that the motion to dismiss plaintiff's first, second, third, fourth and fifth causes of action against defendant Stone & Webster, Inc., and first cause of action against The Shaw Group, Inc. (Dkt. #8), and the motion to dismiss defendant Con-Vey/Keystone, Inc.'s seventeenth affirmative defense and cross claim against The Shaw Group, Inc., and nineteenth affirmative defense and cross claim against Stone & Webster, Inc. (Dkt. #13), be converted to motions for summary judgment and granted.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons

set forth in Magistrate Judge Schroeder's Report and Recommendation, the motion to dismiss plaintiff's first, second, third, fourth and fifth causes of action against defendant Stone & Webster, Inc., and first cause of action against The Shaw Group, Inc. (Dkt. #8), and the motion to dismiss defendant Con-Vey/Keystone, Inc.'s seventeenth affirmative defense and cross claim against The Shaw Group, Inc., and nineteenth affirmative defense and cross claim against Stone & Webster, Inc. (Dkt. #13), are converted to motions for summary judgment and are granted.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: October 16, 2006